IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23.01.2006

CORAM

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

C.M.A.No.113 of 2006

Duraivendhan .. Appellant/ Claimant

Vs.

1.Hindu Bharathi Education Company,
Ambur.

2.The Branch Manager,
United India Insurance Company Ltd.,
Ambur. .. Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988 against the Judgement and Decree dated 11.6.2004 made in M.C.O.P.No.848 of 2002 on the file of the court of the Motor Accident Claims Tribunal-cum-Sub Court, Krishnagiri.

For Appellant : Mr.Y.Jothi Chander
for Mr.U.Karunagaran

JUDGMENT

The claimant is the appellant. The challenge is to the award of the Tribunal dated 11.06.2004 in M.C.O.P.No.848 of 2002. According to the claimant on 17.7.2002 at about 3 p.m., he was riding on a TVS Suzuki motor cycle bearing Registration No.TN-07-V-6547 near Samiar Madam when the vehicle belonging to the first respondent school, which is a van bearing Registration No.TN-23-Y-7590 dashed against him, in which he suffered serious injuries, for which initially he took treatment in Ambur Government Hospital and later in the Vellore Government Hospital. He has also stated that he took native treatment at Puttur. He made a claim for a sum of Rs.3,00,000/= as against the respondents. In support of the injury sustained by him, the appellant filed Exhibits P.2 and P.5 and examined P.W.2, doctor, who issued the wound certificate.

2. The Tribunal on a detailed examination of the evidence placed before it, has found that the cause of accident cannot be solely attributed to the driver of the van but also on the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

appellant, inasmuch as in Ex.P.2, the doctor has recorded that on examination of the appellant, he found that the appellant's breath smelt alcohol. The tribunal also held that the appellant was not possessing a driving licence at the time when the accident took place. Further, P.W.2, also deposed in his cross-examination that though in Ex.P.5, he had certified that the disablement would have been in the order of 35%, since the appellant did not follow the medical advice given to him, disablement can at best be determined to an extent of 15%. Further, though the appellant claimed that he was running a fish farm and earning a sum of Rs.10,000/= per month, there was no iota of evidence to support the said stand. Similarly, as regards the damage caused to his vehicle, though the appellant claimed that it was to an extent of Rs.5,000/=, there was no supporting evidence for that claim. Having regard to the above evidence available before the tribunal and in view of the fact that the appellant was under the influence of alcohol while driving the vehicle, the tribunal held that the appellant also contributed to the cause of the accident. On that basis, the tribunal awarded a sum of Rs.28,000/= in all.

3. On a perusal of the award impugned in this appeal, I find that the tribunal was perfectly justified in its conclusion, when it held that the appellant contributed to the accident and therefore, there is no scope to award any higher compensation and mulct the owner of the vehicle or its insurer. Day in and day out, it is being noticed that in spite of the traffic authorities repeatedly cautioning the drivers and the two-wheeler riders not to drive such vehicles under the influence of alcohol, such cautions were being flouted with impunity. Further, driving the vehicle under the influence of alcohol is prohibited and an offence under the provisions of Motor Vehicles Act. In such circumstances, when persons drive the vehicle under the influence of Alcohol and thereby meet with an accident, it has to be held that any sympathy shown to such persons would be a misplaced one and it will only encourage such persons to continue to violate the Law and thereby they will not only get themselves involved in such accidents, but would be a source of perennial threat to other road users and innocent public. Since such accidents due to alcoholic influence is on the increase, it is high time that the Law makers should bring about appropriate legislation prohibiting payment of any compensation to such violators of Law, by whose impudent adventurism the victims are only the innocent gullible public. Looked at from any angle, the claim of such persons cannot be considered on par with the claim of other persons, who had been victims of such accidents and who suffered such injuries for no fault of theirs.

4. However, much the learned counsel would contend that mere smell of alcohol in the breath of the appellant as noted by the doctor cannot be taken as sacrosanct to hold that he drove the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

vehicle under the influence of alcohol, unless regular blood test was conducted to confirm the said version, I am of the view that while considering the claim for compensation when reliance was placed on the medical records viz., the Accident Register/Wound Certificate issued by the doctor, who happened to treat the appellant immediately after the accident, there is no reason why the said observation recorded by the doctor should be eschewed from consideration. The doctor had no axe to grind as against the appellant. It is common ground that if the appellant's breath smelt of alcohol, it can be easily inferred for the purpose of consideration of grant of compensation, that he was definitely under the influence of alcohol at the relevant point of time. It is relevant to note that according to the appellant, the accident took place at 3 p.m. on 17.7.2002 and he was examined at 3.15 p.m. on the same day by the doctor concerned. In such circumstances, from the medical report of the doctor, it can be safely held that at the time of accident, the appellant was under the influence of alcohol and therefore, the tribunal's conclusion that the appellant contributed to the accident was perfectly justified. I therefore do not find any flaw in the reasoning of the tribunal when it chose to grant the compensation to an extent of Rs.28,000/= only considering the material evidence placed before it as regards the injury sustained by the appellant as well as the nature of accident in which such injuries came to be caused on the appellant. There is no merit in this appeal and the appeal is dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

nvsri

To

1. The Sub Court, Motor Accidents Claims Tribunal,
Krishnagiri.

2. The Secretary to Government,
Law Department,
Fort St. George,
Chennai-9.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

3. The Secretary to Government,
Ministry of Law and Justice
Union of India,
New Delhi.

1 cc to Mr.V. Kumaravelan, Advocate, SR. 2415

C.M.A.No. 113 of 2006

JE (CO)
kk 11/2

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/